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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

BILL SCHEPLER and ADRIAN
GARCIA, Individually and On
Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

AMERICAN HONDA MOTOR
CO., INC.,

Defendant.

CIVIL ACTION NO. 2:18-cv-6043-
GW-AFM

**PLAINTIFFS' MEMORANDUM
OF POINTS AND
AUTHORITIES IN
OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF ADRIAN
GARCIA'S CLAIMS**

Third Amended Complaint Filed:
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1 **I. INTRODUCTION**

2 As this Court recognized in denying the Motion to Dismiss filed by
 3 Defendant, American Honda Motor Co. (“AHM” or “Defendant”), Plaintiffs,
 4 Bill Schepler (“Mr. Schepler”) and Adrian Garcia (“Mr. Garcia”) (collectively,
 5 “Plaintiffs”), allege that AHM “deceptively markets and advertises the [2017
 6 and 2018 model year Honda] CR-V as having a seating capacity for five people
 7 with three-point seat belts at all seating positions, when, in fact, if there are three
 8 adult passengers or even a single car seat, the passengers cannot simultaneously
 9 buckle their seat belts *safely*.” Final Ruling on AHM’s Motion to Dismiss
 10 (“Final Ruling”), Dkt. No. 42, at 2, 5-6 (emphasis added).¹ Since prevailing on
 11 AHM’s motions, Plaintiffs have adduced material evidence in support of those
 12 allegations, which they submitted to the Court in support of their Motion for
 13 Class Certification. Motion for Class Certification, Dkt. No. 81, at 3-12.

14 AHM’s Motion for Summary Judgment (Dkt. No. 110) (“MSJ” or
 15 “Motion”) ignores Plaintiffs’ allegations and material evidence. Despite AHM’s
 16 attempt to muddy the issues by pointing to the irrelevant idiosyncrasies of Mr.
 17 Garcia’s individual buying and driving experience, the salient material facts are
 18 true as alleged: he purchased his CR-V reasonably believing AHM’s false and
 19 misleading representations and omissions that the CR-V could safely

20 _____
 21 ¹ Though the Court was addressing the First Amended Complaint (“FAC”) (Dkt.
 22 No. 29) in that order, there are no material factual differences with respect to the
 23 general allegations regarding the CR-V’s safety defect between the FAC, the
 24 Second Amended Complaint (“SAC”), Dkt. No. 43, and the operative Third
 25 Amended Complaint (“TAC”), Dkt. No. 66. The SAC amended Mr. Schepler’s
 26 breach of warranty claim to clarify that it was made under Illinois law (Final
 27 Ruling, at 15; SAC; Minutes of Ruling on AHM’s Motion to Dismiss SAC, Dkt.
 28 No. 56), while the TAC added Mr. Garcia, a California resident, as a named
 plaintiff, his experience with his CR-V, as well as the California counterparts to
 the Illinois consumer protection and breach of express warranty claims asserted
 by Mr. Schepler. Plaintiffs’ Motion for Leave to File TAC, Dkt. No. 62, at 2;
 TAC.

1 accommodate three passengers in the backseat, with or without a car seat.

2 Meanwhile, none of the substantive legal or factual arguments AHM makes in
3 support of its Motion have any merit.

4 First, Defendant claims that its five-passenger representations are “legally
5 true” because the CR-V complies with certain sections of the Federal Motor
6 Vehicle Safety Standards (“FMVSS”). This is essentially a federal preemption
7 argument, which AHM avoided labeling as such, likely because there is no
8 legislative or regulatory basis for invoking preemption.

9 Second, AHM essentially re-hashes a rejected argument from its motion
10 to dismiss, claiming that its five-passenger representations are “factually true”
11 because it is physically possible for three passengers to belt themselves in to the
12 CR-V’s backseat. *See* AHM’s Motion to Dismiss Amended Complaint, Dkt.
13 No. 33, at 13-17; Final Ruling, at 5-6. But that fact was never in dispute—
14 Plaintiffs never alleged that the CR-V cannot accommodate three buckled
15 passengers in the rear seat. Instead, as noted above, and as the Court
16 recognized, the issue is whether those three passengers can do so *safely*. The
17 material evidence adduced in this case establishes that they cannot.

18 Third, AHM claims that Mr. Garcia suffered no injury because he had the
19 opportunity to take a test drive to assess the CR-V’s rear seat belt configuration,
20 so he ostensibly “received exactly what he bargained for.” In other words,
21 according to Defendant, it cannot be liable for marketing the CR-V as a five-
22 passenger vehicle because Mr. Garcia is solely responsible for checking the
23 quality and attributes of the CR-V, regardless of any false or misleading
24 representations AHM may have made. This is exactly the type of *caveat emptor*
25 defense that California’s consumer protection laws were enacted to extinguish.

26 Fourth, Defendant urges the Court to dismiss Mr. Garcia’s UCL and FAL
27 claims² because relief available through those equitable claims is duplicative of

28 ² Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.* and

1 the relief available through Mr. Garcia's legal claims. This argument should be
 2 rejected as both false and premature. In fact, Mr. Garcia's legal claims do not
 3 provide him with the injunctive relief he also seeks. And, at this juncture, when
 4 Mr. Garcia has yet to reach judgment on any of his claims, dismissal of his UCL
 5 and FAL claims will deprive him of available alternative avenues of relief.

6 Fifth, AHM argues that Mr. Garcia lacks standing for injunctive relief
 7 requiring Defendant to accurately represent its vehicles' seating capacity
 8 because, as with AHM's "no-injury" argument, he will have the opportunity to
 9 inspect any future Honda vehicles that he may consider purchasing. Once again,
 10 this type of *caveat emptor* argument defies California's consumer protection
 11 laws and is meritless.

12 Finally, AHM claims that there is no evidence that any seat belt
 13 component in the CR-V fails to function properly during normal use, so there is
 14 no material evidence to support Mr. Garcia's claim that AHM breached its seat
 15 belt warranty. But, as Plaintiffs' evidence establishes, the seat belt configuration
 16 of the backseat is defective because it prevents **two** passengers from
 17 simultaneously buckling into the middle and driver's side seat safely. As a
 18 result, all components that cause the defect "fail[] to function properly during
 19 normal use" and are, thus, covered by the seat belt warranty.

20 **II. SUMMARY OF THE EVIDENCE**

21 **A. AHM's Common False and Misleading Misrepresentations and** 22 **Omissions**

23 Plaintiffs have presented evidence of AHM's false or misleading
 24 representations that the CR-V could safely seat five passengers, with or without
 25 child safety seats. TAC, ¶¶ 1, 12-20; Final Ruling, at 2 (citing the brochure
 26 advertising, press release, owner's guide, and owner's manual); Plaintiffs'
 27 Motion for Class Certification, at 3; Pl. Exs. B-E, Dkt. Nos. 81-3, 81-4, 81-5,
 28 False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*

1 81-6 (brochures indicating consistent representations). At the motion to dismiss
2 stage, AHM argued that there was “no statement about whether five people
3 would fit in the car while a child car seat was present or whether all child car
4 seats can fit in the CR-V” and “three adults can safely sit in the back seat.”
5 Final Ruling, at 5. The Court rejected that argument. First, the Court found that
6 “a reasonable consumer could have been deceived as to the car’s capacity when
7 having at least one child in a car seat present” because AHM had made various
8 “representations affirming the CR-V’s five-person seating capacity . . . without
9 disclaiming or narrowing that to just adults” while simultaneously “discuss[ing]
10 the use of child car seats” in other marketing and advertising materials.” *Id.* at
11 6. Next, it found that, if true, Plaintiffs’ allegations that “the rear middle and
12 rear driver’s side passenger seat belts cannot be used ‘at the same time, without
13 both of the seat belts *overlapping, twisting, or catching,*’” would establish that
14 the CR-V could not safely seat five adult passengers. *Id.* (emphasis in original).

15 AHM’s Motion does not dispute that it made the false and misleading
16 representations that are presented by Plaintiffs, and, as discussed next, Plaintiffs
17 have adduced material evidence to support both the child safety seat and the five
18 adult passenger allegations.

19 **B. The Common Seat Belt Configuration Defect**

20 As set forth in Plaintiffs’ Motion for Class Certification, Plaintiffs’
21 automotive safety expert, Gary R. Whitman, examined the CR-V’s rear seat belt
22 configuration and found it to be defective and unreasonably unsafe. Motion for
23 Class Certification, at 3-5; Pl. Ex. A, Dkt. No. 81-2 (Whitman Report).
24 Specifically, the CR-V positions the inboard anchor/buckle of the seat belt for
25 the left rear occupant position on the inboard side of the left anchor of the center
26 occupant position and encased in a hard rubber boot or casing, which forces the
27 center occupant of the rear seat to twist his/her seat belt either in front of or
28 behind the left rear buckle/latchplate assembly to buckle his/her seat belt if the

1 left rear seat occupant buckles his/her seat belt.³ As a result of the configuration,
 2 Mr. Whitman found that five people could not fit safely in the CR-V. Pl. Ex. A,
 3 at 26-27 of 29. Indeed, as Mr. Whitman notes, *the CR-V owner's manual*
 4 *specifically warns against a "twisted" belt or a belt that may be "caught on*
 5 *anything."* *Id.*, ¶ 14.

6 Mr. Whitman's assessment is corroborated by [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 (Pl. Ex. F, Dkt. No. 81-7, at 47:3-48:15), [REDACTED]
 11 [REDACTED]
 12 [REDACTED] (Pl. Ex. G, Dkt. No. 81-8, at
 13 68:21-69:24). Indeed, the data derived by the "human factors" expert AHM
 14 retained for this litigation, Douglas Young, also supports Mr. Whitman's
 15 assessment -- even the arbitrary testing Mr. Young deployed for determining
 16 seat belt ease of use shows that the CR-V's rear seat belt configuration
 17 significantly increases the buckling and unbuckling times for the left rear
 18 occupant when there is a dummy or child seat in the center occupant position.
 19 Pl. Ex. WW (Report of Douglas Young), at 17 (Table 1), 20 (Table 3); Pl. Ex. II
 20 (Declaration of Gary R. Whitman), ¶¶ 7-12.

21 **C. The Garcias' Experience**

22 Mr. Garcia and his wife, Ms. Johann Zapien (collectively the "Garcias"),
 23 began looking for a new vehicle after Ms. Zapien became pregnant with their
 24 second child, in or around August 2017. Pl. Ex. JJ (Deposition of Adrian
 25 Garcia), at 52:6-53:2. To accommodate his growing family, Mr. Garcia
 26 specifically looked for a vehicle with a five-passenger capacity so that an adult

27 _____
 28 ³ Mr. Whitman illustrates these conditions in his Report. Pl. Ex. A, ¶¶ 8
 (Figures 1-4), 9 (Figures 7-14).

1 could be situated in the back with two children, and he saw such representations
2 for the CR-V set forth on the Honda dealership's website. *Id.* at 53:3-17, 54:5-
3 20, 55:24-25. The Garcias and their daughter visited the Honda dealership twice
4 to test drive the CR-V in the month or two prior to purchasing it on or about
5 March 3, 2018. *Id.* at 45:23-25, 56:21-57:12.

6 Shortly after purchasing the CR-V, the Garcias discovered that it could
7 not seat three passengers safely in the backseat. Mr. Garcia was able to squeeze
8 his mother into the backseat with his children in car seats on both sides on one
9 or two occasions, but it was a struggle, and they had to unlatch the car seat and
10 take it out so that his mother could get in first and then put the car seat back in.
11 *Id.* at 68:12-69:15. Because of the difficulty caused by the seat belt
12 configuration, which caused the rear middle and rear driver seats' seat belts to
13 overlap, twist, and/or catch when both were simultaneously used, and the
14 resultant safety concerns, Mr. Garcia stopped putting his mother in the rear seat
15 with his children. *Id.* at 69:2-6, 72:25-74:25, 77:1-16, 85:1-9, 85:20-86:6.

16 Mr. Garcia brought his CR-V into the Honda dealership on April 10,
17 2019, to see if the service technicians at the dealership could address this safety
18 issue. *Id.* at 84:12-25. Despite agreeing with Mr. Garcia's assessment and
19 providing initial assurances that the defect could be easily remedied by reversing
20 the buckles, the dealership personnel ultimately informed Mr. Garcia that there
21 was no issue with the seat belt configuration. *Id.* at 86:11-24, 89:20-92:9.
22 Though Mr. Garcia paid for the CR-V as a vehicle that could safely seat five
23 passengers, he did not receive what he bargained for. *Id.* at 99:1-3. As a result,
24 he is unable to safely fit three passengers in the rear, including when car seats
25 are used. *Id.* at 99:4-15.

26 **III. SUMMARY JUDGMENT STANDARD**

27 "Summary judgment is appropriate only where the 'pleadings,
28 depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 728-29 (9th Cir. 2013) (citation omitted). “In order to prevail, a party moving for summary judgment must show the absence of a genuine issue of material fact with respect to an essential element of the non-moving party’s claim, or to a defense on which the non-moving party will bear the burden of persuasion at trial.” *Seegert v. Rexall Sundown, Inc.*, No. 317CV01243BENJLB, 2020 WL 1674465, at *2 (S.D. Cal. Apr. 3, 2020) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The court draws all reasonable factual inferences in favor of the non-movant, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), and is “not permitted to weigh evidence.” *Zobmondo Entm’t, LLC v. Falls Media, LLC*, 602 F.3d 1108, 1121 (9th Cir. 2010).

IV. ARGUMENT

A. **Mr. Garcia’s Consumer Protection Claims Are Supported by Material Evidence**

First, Defendant argues that Mr. Garcia cannot prove a misrepresentation because the CR-V “legally” and “factually” has a five-person seating capacity. MSJ, at 11-15. These arguments are meritless.

1. **AHM’s Compliance with FMVSS 571.10 and 49 C.F.R. 571.3 Does Not Preempt Mr. Garcia’s Safety Allegations**

AHM contends that the CR-Vs’ five-passenger seating capacity representation is “true as a matter of law” because the rear seating positions comply with FMVSS 571.10 and 49 C.F.R. § 571.3. MSJ, at 11-12. In essence, AHM is asserting that compliance with FMVSS 571.10 and 49 C.F.R. § 571.3 preempts any state law allegation that the CR-V cannot fit three passengers in the rear. As conceded by its own expert, however, compliance with FMVSS does not mean that a seat belt design is automatically safe. Pl. Ex. UU, at 86:17-

1 24 (July 1, 2020 Deposition of William W. Van Arsdel). Furthermore, this
2 proposition fails to address the gravamen of Mr. Garcia's claims, *i.e.*, the CR-V
3 cannot fit five passengers *safely*.

4 Just as significantly, if not more so, AHM does not explain how
5 application of California's consumer protection statutes to those allegations
6 "stand[] as an obstacle to the accomplishment and execution of the full purposes
7 and objectives" of FMVSS 571.510 or 49 C.F.R. § 571.3, which is necessary to
8 establish that the federal regulations pre-empt state consumer protection laws.
9 *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011). For
10 example, the Supreme Court held that "the 1984 version of FMVSS 208 [had
11 preemptive effect with respect to vehicle airbags because it] embodie[d] the
12 Secretary [of Transportation]'s policy judgment that safety would best be
13 promoted if manufacturers installed alternative protection systems in their fleets
14 rather than one particular system in every car." *Geier v. Am. Honda Motor Co.*,
15 529 U.S. 861, 881 (2000). But the 1989 version of FMVSS 208 did not have the
16 same preemptive effect with respect to seat belt designs because the Secretary of
17 Transportation "did not determine that the availability of [seat belt design]
18 options [in FMVSS 208] was necessary to promote safety." *Williamson*, 562
19 U.S. at 336 (citation omitted).

20 Like in *Williamson*, AHM does not point to any authority indicating that
21 compliance with FMVSS 571.10 and 49 C.F.R. § 571.3 precludes state law seat
22 belt safety defect claims. Indeed, 49 C.F.R. § 571.3 only provides definitions,
23 while FMVSS 571.10 governs the "[n]umber of designated seating *positions*,"
24 not seat belt designs. 49 C.F.R. § 571.10 (emphasis added); 49 C.F.R. § 571.3.
25 In other words, FMVSS 571.10 requires automakers to designate the number of
26 seating positions based on the width of the seating area, and is irrelevant to
27 whether the seat belt system for those positions are safe or unsafe. *See* 49
28

1 C.F.R. § 571.10.⁴ Moreover, *Williamson* has clearly determined that allegations
 2 of defective seat belt designs are not subject to federal preemption. In sum,
 3 AHM does not, because it cannot, meet its “considerable burden of overcoming
 4 ‘the starting presumption that Congress does not intend to supplant state law’” to
 5 establish that the CR-V can safely seat five passengers “as a matter of law.”
 6 *Stengel v. Medtronic Inc.*, 704 F.3d 1224, 1227 (9th Cir. 2013) (citation
 7 omitted).

8 **2. There Is Material Evidence That Mr. Garcia’s CR-V** 9 **Cannot Safely Seat Five Passengers**

10 Next, Defendant contends that Mr. Garcia cannot prove that AHM’s CR-
 11 V seating capacity representation is false or deceptive because the CR-V can,
 12 “factually,” fit five passengers. MSJ, at 11, 12-15. Once again, AHM pointedly
 13 ignores the gravamen of Mr. Garcia’s claim -- that although his CR-V can
 14 physically fit five passengers, it cannot do so *safely*. Final Ruling, at 3, 5-6;
 15 TAC, ¶¶ 1-2, 27. As discussed above, Section II.B, *supra*, at 4-5, Plaintiffs have
 16 set forth material evidence that the CR-V cannot, in fact, fit five passengers
 17 safely, with or without a child safety seat, because of its rear seat belt
 18 configuration. None of AHM’s evidence addresses Plaintiffs’ allegations or
 19 rebuts the overwhelming evidence.

20 AHM first proffers evidence that three rear seat passengers are able to
 21 simultaneously buckle and unbuckle their seat belts in the rear seats, with or
 22 without car seats. MSJ, at 12-13, 14. But Mr. Garcia never claimed that three
 23 passengers are unable to simultaneously buckle their seat belts in the rear seats,
 24 with or without child safety seats. He testified that he was able to do so once or
 25 twice, but stopped because it was unsafe, as the seat belt design caused the

26
 27 ⁴ Honda chose to build and advertise the CR-V as a five-seater for its own
 28 reasons and was not required by any federal regulations to do so. Pl. Ex. UU, at
 50:3-9, 85:9-86:7, 95:12-19.

1 middle rear and left rear seat belts to overlap, twist, and/or catch—a condition
2 that the CR-V’s manual describes as unsafe—when both were simultaneously
3 used. *See* Section II.B-C, *supra*, at 4-6. Mr. Garcia’s assessment, as noted
4 above, is [REDACTED],
5 consumer complaints received by AHM, the data derived from AHM’s “human
6 factors” expert, and confirmed by Mr. Whitman’s expert analysis. *See* Section
7 II.B, *supra*, at 5.

8 Defendant also proffers evidence that the three rear seat passengers
9 encountered no “difficulty buckling or unbuckling their seat belt,” though it
10 notably fails to do the same with respect to scenarios where a car seat is used.
11 MSJ, at 13. This still sidesteps the crux of Plaintiffs’ claims and evidence -- that
12 the middle rear and left rear seats’ seat belt configuration is dangerous and, thus,
13 defective because they overlap, twist, and/or catch when both seat belts are used
14 simultaneously. Final Ruling, at 6. As Mr. Garcia observed, and Mr. Whitman
15 confirmed, the overlapping, twisting, and/or catching caused by the defective
16 seat belt configuration created delay and unnecessary risks to the middle rear
17 and left rear passengers in the event of an accident, which only worsened when
18 child safety seats were used. Section II.B-C, *supra*, at 4-6.⁵ AHM’s misleading
19 insistence that test subjects were able to perform the physical contortions
20 necessary to buckle and unbuckle their seat belts in static environments without
21 any pressure, stress, or external physical forces in play does not meaningfully
22 address the safety issues raised by the configuration.⁶ In fact, AHM was forced

23
24 ⁵ AHM attacks the reliability and relevance of Mr. Whitman’s expert analysis,
25 which is only an acknowledgment of the material evidence that Plaintiffs have
26 gathered in support of the safety claims. MSJ, at 14-15. As discussed more
27 fully in Plaintiffs’ concurrently-filed opposition to AHM’s Motion to Exclude
Whitman, Mr. Whitman’s expert analysis fully meets the requisite evidentiary
standards.

28 ⁶ AHM also attacks Mr. Garcia for not attempting to install a child safety seat in
the middle rear position and fit a passenger in the left rear position at the same

1 to distort Mr. Whitman’s testimony to fit its argument. Contrary to AHM’s
 2 assertion, when asked about combinations of passengers and car seats in the
 3 rear, Whitman testified, consistent with his opinion, about the obstructions and
 4 difficulty in buckling: “With some of the child seats, we managed to get the
 5 latchplate engaged with a little fumbling around the obstruction. In others, we
 6 had more difficulty. And, in some, it was an impossibility.” Pl. Ex. TT (May 13,
 7 2020 Deposition of Gary Whitman), at 249:25-250:3; 250:20-251:1 (“[I]f you
 8 look at the video of him trying to insert the latchplate even when the buckle was
 9 not underneath the child seat, he still had difficulty and sometimes couldn’t get
 10 the latchplate to it. You can see the buckle, but there’s not enough of an
 11 opening to get it into the buckle because you’re blocked by the center rear
 12 belt[.]”).

13 Plaintiffs have presented material evidence to support their claim that the
 14 CR-V cannot, in fact, fit five passengers safely, with or without child safety
 15 seats, because of its rear seat belt configuration. As such, summary judgment
 16 cannot be granted on this ground.

17 **3. AHM’s Misrepresentations that the CR-V Could Safely** 18 **Accommodate Five Passengers Gave Rise to Mr. Garcia’s** 19 **Claims**

20 AHM asserts that Mr. Garcia’s personal experience somehow precludes
 21 AHM’s representations from being false or deceptive by inaccurately framing
 22 Mr. Garcia’s “primary complaint” as the challenges he faced installing two car
 23 seats into his CR-V. MSJ, at 15-16. This is a red herring. Mr. Garcia’s claims
 24 are premised on his inability to safely accommodate a fifth passenger in the rear
 25 middle seat due to the rear seat belt configuration. TAC, ¶¶ 48-52; Section II.C,
 26 *supra*, at 5-6.

27 time. MSJ, at 15. But the ability to do so also does not meaningfully address
 28 the safety issues with respect to buckling and unbuckling in the event of an
 emergency.

1 AHM also asserts, without any evidentiary or legal support, that it would
2 have been unreasonable for Mr. Garcia to expect his CR-V to accommodate five
3 passengers when using his two child safety seats or one booster seat because
4 “[a] reasonable consumer would understand that any vehicle with seating
5 capacity for five may not be able to accommodate all passengers and all car seat
6 configurations.” MJS, at 16. This is yet another red herring.

7 AHM’s advertising and manuals clearly tout the CR-V as a five-seat
8 vehicle, and there is no evidence that Defendant told customers that, in
9 numerous circumstances, it could only accommodate four passengers.

10 Incredibly, [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Pl. Ex. YY,
15 (February 6, 2020 Deposition of Makoto Tsuruta), at 23:11-21, 69:6-24). Of
16 course, [REDACTED]

17 [REDACTED] is directly contrary to AHM’s
18 promotion of the CR-V as a 5-seater and its warranty that the seat belts work in
19 all conditions and is not obvious to consumers. *See also* Pl. Ex. XX (February
20 6, 2020 Deposition of Ezra Yeung), at 46:9-48:15 [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]. Therefore, the evidence establishes that the use of even one child safety
24 seat would render the CR-V unsafe to accommodate five passengers, much less
25 two. Section II.B, *supra*, at 4-5.

26 **B. AHM’s Misrepresentations Caused Mr. Garcia Injury and**
27 **Violated California’s Consumer Protection Laws**

28 AHM argues that Mr. Garcia cannot establish causation because he test

drove the CR-V and had the opportunity to see and interact with the rear seat belt prior to purchase, and, thus, presumably should have known that, despite AHM's representations that the CR-V can fit five passengers, it cannot actually do so safely, with or without a child safety seat. MSJ, at 16-17. AHM cannot, however, point to any relevant evidence to support its argument. Instead, AHM improperly transmutes the Garcias' testimony about their vehicle purchasing process⁷ into an admission that Mr. Garcia "knew exactly what he was getting or did not care." *Id.* This stance is especially silly since it ignores AHM's own knowledge of the limitations of the rear seats and because assessment of the safety of a vehicle's seat belt configuration requires expert analysis, as indicated by the expert testimony proffered by both AHM and Plaintiffs on the issue. Pl. Exs. A, II, VV, WW.

The absurdity of this argument is compounded by AHM's inability to point to any relevant legal authority to support its position.⁸ Indeed, California

⁷ In the portions of testimony that AHM cites, Mr. Garcia explains how he took a "test drive" and looked at different CR-V models and considered other Honda vehicles, while his wife explained that she was looking for an SUV that would fit her stroller. MSJ, at 16-17 (*citing* Jan. 28, 2020 Deposition of Adrian Garcia (Pl. Ex. JJ), at 61:16-19, 57:15-58:1; March 10, 2020 Deposition of Johann Zapien (Pl. Ex. LL), at 16:3-5).

⁸ AHM cites two authorities, *Degelmann v. Advanced Med. Optics, Inc.*, 659 F.3d 835, 840 (9th Cir. 2011), *vacated*, 699 F.3d 1103 (9th Cir. 2012) and *Wilens v. TD Waterhouse Grp., Inc.*, 120 Cal. App. 4th 746 (2003). In *Degelman*, which the Ninth Circuit later vacated after the parties agreed to dismiss the appeal, the Ninth Circuit held that the district court "conceived of injury in fact too narrowly" when it reasoned that "class members would have bought other contact lens solution" even though the plaintiffs presented evidence that, "[h]ad the product been labeled accurately, they would not have been willing to pay as much for it as they did, or would have refused to purchase the product altogether." 659 F.3d at 840. In *Wilens*, the California Court of Appeal affirmed the trial court's finding that individual damage issues would predominate because the unconscionability of the account-holders' termination provision may not necessary have caused any damages just by the "mere insertion" of that provision, and the plaintiff did not establish that the provision

1 consumer protection statutes were enacted primarily to address these types of
 2 *caveat emptor* arguments:

3 There is no duty resting upon a citizen to suspect the honesty of
 4 those with whom he [or she] transacts business. Laws are made to
 5 protect the trusting as well as the suspicious. [T]he rule of *caveat*
 emptor should not be relied upon to reward fraud and deception.

6 *Thompson v. 10,000 RV Sales, Inc.*, 130 Cal. App. 4th 950, 976 (2005); *see*
 7 *Williams v. Gerber Prod. Co.*, 552 F.3d 934, 939 (9th Cir. 2008) (“We disagree
 8 with the district court that reasonable consumers should be expected to look
 9 beyond misleading representations on the front of the box to discover the truth
 10 from the ingredient list in small print on the side of the box”); *see also In re*
 11 *Tobacco II Cases*, 46 Cal. 4th 298, 328, 207 P.3d 20, 40 (2009) (“an allegation
 12 of reliance is not defeated merely because there was alternative information
 13 available to the consumer-plaintiff”). In other words, just as the “Ninth Circuit
 14 has found a disclaimer on the side of a box insufficient to cure misleading
 15 statements on the front of a box” and “a disclaimer ‘buried deep’ in Cisco’s
 16 website is insufficient to set a reasonable consumer straight,” the opportunity for
 17 the average consumer -- who is most likely not a seat belt expert -- to take a test
 18 ride cannot absolve AHM for misrepresenting the safe seating capacity of Mr.
 19 Garcia’s CR-V. *Cisco Sys. Inc. v. Link US, LLC*, No. 18-CV-07576-CRB, 2019
 20 WL 6682838, at *9 (N.D. Cal. Dec. 6, 2019).

21 Meanwhile, to establish standing under the UCL, the CLRA, and the
 22 FAL, the named plaintiff need only demonstrate actual reliance. Final Ruling, at
 23 9 (citing *Potter v. Chevron Prods. Co.*, No. 17-CV-06689-PJH, 2018 WL
 24 4053448, at *11 (N.D. Cal. Aug. 24, 2018)). Mr. Garcia has provided material

25 _____
 26 was material to the account holders. 120 Cal.App.4th at 755. Here, as discussed
 27 in Plaintiffs’ Motion for Class Certification briefing, Plaintiffs have presented
 28 evidence that AHM’s misrepresentations were material and that damages can be
 determined on a classwide basis. Motion for Class Certification, at 10, 18-19;
 Reply in support of Motion for Class Certification, at 13-22.

1 evidence of such reliance -- he testified that he was deceived into paying for, but
 2 not receiving, a vehicle that could safely seat five passengers. Pl. Ex. JJ, at
 3 98:22-99:7; *see Degelmann*, 659 F.3d at 840. Simply put, Mr. Garcia did not
 4 receive the benefit of his bargain with AHM.

5 This material evidence establishes an injury under California's consumer
 6 protection laws because Mr. Garcia did not receive what he paid for. *See*
 7 *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 822 (9th Cir. 2019) ("The primary
 8 right alleged to have been violated in *Anthony*, as in the case before us, was the
 9 right to take a product free from defect. The defect did not cause the plaintiffs'
 10 injury; the defect was the injury[.]") (quotation omitted); *see also In re Arris*
 11 *Cable Modem Consumer Litig*, 327 F.R.D. 334, 352 (N.D. Cal. 2018))
 12 (allegations of economic injury supported by allegations that defendant
 13 represented that the product had features that it did not have). As such, AHM's
 14 argument that "Garcia bargained for [and received] a vehicle with seating
 15 capacity for five" (MSJ, at 17) is unsupported and meritless.⁹

18 ⁹ AHM cites *Birdsong v. Apple, Inc.*, 590 F.3d 955 (9th Cir. 2009) and *In re*
 19 *Toyota Motor Corp. Hybrid Brake Mktg., Sales Practices & Prod. Liab. Litig.*
 20 (*"In re Toyota"*), 959 F. Supp. 2d 1244 (C.D. Cal. 2013) in support of its
 21 argument that Mr. Garcia was not injured. Both authorities are inapplicable,
 22 here. In *Birdsong*, the plaintiffs' alleged economic harm from the iPod's
 23 purported defect of risking hearing loss failed because, not only did Apple make
 24 no "representations that iPod users could safely listen to music at high volumes
 25 for extended periods of time," but actually "provided a warning against listening
 26 to music at loud volumes." 590 F.3d at 961. In *In re Toyota*, the lead plaintiff
 27 failed to present, on summary judgment, evidence of "a specific design defect
 28 common" to all of the class vehicles or the existence of the defect at issue to his
 particular vehicle. 959 F. Supp. 2d at 1254. Here, in contrast, Plaintiffs have
 presented evidence that the rear seat belt configuration is defective such that,
 contrary to AHM's representations and without any warning, the CR-V cannot
 safely accommodate five passengers, with or without car seats. *See* Section II.B,
supra, at 4-5.

C. Mr. Garcia Has Presented Evidence of Damages

AHM argues that Mr. Garcia is unable to present a non-speculative measure of his damages. MSJ, at 17-18. AHM concedes, however, that Plaintiffs have presented two models with which to measure each class member's, and, thus, Mr. Garcia's, damages: (1) the Average Overcharge model, based on the price premium class members paid for a vehicle that can safely accommodate five passengers, and (2) the Median Cost of Repair model, based on the median cost of repair (parts plus labor) to address the seat belt configuration defect so that the CR-V can safely accommodate five passengers. Pl. Ex. BB, Dkt. No. 81-29, at ¶¶ 15-16; Motion for Class Certification, at 11-12, 22-23; *see Nguyen*, 932 F.3d at 816; *Briseno v. ConAgra Foods, Inc.*, 674 F. App'x 654, 657 (9th Cir. 2017).¹⁰ To the extent Defendant claims that these damages models are inadmissible, it makes no arguments other than referring to its opposition to Plaintiffs' Motion for Class Certification. Plaintiff's response to those arguments is set forth in their concurrently-filed Reply in support of their Motion for Class certification, and is incorporated herein by reference.

AHM also notes that "Garcia concedes he is not entitled to an average overcharge damage amount," citing the portion of Plaintiffs' motion for class certification requesting, in the alternative, that the Court certify the California classes under Rule 23(b)(2) for injunctive relief. MSJ, at 18 (citing ECF No. 81, at 24). But there is no such "concession": both the Average Overcharge model and the Median Cost of Repair model qualify as the restitutionary relief that Garcia requested in the alternative. Motion for Class Certification, at 22-23; *Nguyen*, 932 F.3d at 816; *Briseno*, 674 F. App'x at 657.

¹⁰ By contrast, in *Magnetar Techs. Corp. v. Intamin, Ltd.*, which AHM cites, the Ninth Circuit found that the plaintiff failed to submit "expert witnesses or designated documents providing competent evidence from which a jury could fairly estimate" its lost profits. 801 F.3d 1150, 1159 (9th Cir. 2015).

D. Mr. Garcia's Omission-Based Claims Are Also Supported By Material Evidence

AHM argues that Mr. Garcia's omission-based CLRA and UCL claims should be dismissed because no circumstances arose to trigger a duty to disclose, and that the "CRV cannot fit five passengers under all circumstances is a known, open, and obvious fact that does not require disclosure." MSJ, at 18-19. Although this is a telling admission by Defendant, it once again misframes Mr. Garcia's claims. As repeatedly noted and as this Court recognized, Mr. Garcia alleged that AHM "deceptively markets and advertises the CR-V as having a seating capacity for five people with three-point seat belts at all seating positions, when, in fact, if there are three adult passengers or even a single car seat, the passengers cannot simultaneously buckle their seat belts safely." Final Ruling, at 2, 5-6. Furthermore, AHM consistently discussed the use of child safety seats in its written materials without "disclaiming or narrowing" their impact on the CR-V's safe seating capacity—*e.g.*, caution that although there are five seating areas and five individuals can, as a factual matter, fit into the vehicle, they cannot do so safely, with or without a child safety seat. Final Ruling, at 6.¹¹

These facts and evidence trigger the duty to disclose under any of the three circumstances discussed in *Hodsdon v. Mars, Inc.*, 891 F.3d 857 (9th Cir. 2018). The omissions at issue: (1) concern an unreasonable safety hazard; (2) are material in light of AHM's affirmative representations; and (3) go to the central function of the product as a 5-passenger vehicle. *Id.* at 861-4.

To the extent the test set forth in *LiMandri v. Judkins*, 52 Cal. App.4th 326 (1997) applies,¹² Mr. Garcia satisfies at least three of the four circumstances

¹¹ Plaintiffs have presented evidence of such representations and omissions, which AHM do not dispute. *See* Section II.A, *supra*, at 3-4.

¹² As AHM concedes, the *LiMandri* test only applies to the two circumstances besides the presence of an unreasonable safety defect, *i.e.*, the material fact from a "partial disclosure" and the "central function" circumstances. *See Hodsdon*, 891

1 set forth in that test. *See Hodsdon*, 891 F.3d at 862 (noting that the *LiMandri*
 2 test is met when, *inter alia*, “(2) when the defendant has exclusive knowledge of
 3 material facts not known or reasonably accessible to the plaintiff; (3) when the
 4 defendant actively conceals a material fact from the plaintiff; . . . [or] (4) when
 5 the defendant makes partial representations that are misleading because some
 6 other material fact has not been disclosed”) (quoting *Collins*, 202 Cal. App. 4th
 7 at 255). Plaintiffs have set forth material evidence that: (1) AHM had exclusive
 8 knowledge of the seat belt defect not known or reasonably accessible to Mr.
 9 Garcia and other consumers (Motion for Class Certification, at 6-10); (2) AHM
 10 concealed that defect (*id.*); and (3) AHM represented “the CR-V as having a
 11 seating capacity for five people with three-point seat belts at all seating
 12 positions, when, in fact, if there are three adult passengers or even a single car
 13 seat, the passengers cannot simultaneously buckle their seat belts safely.” Final
 14 Ruling, at 2; *see Rutledge*, 238 Cal. App. 4th at 1179 (call center data, service
 15 data, and internal meeting to address issues created “a triable issue of fact as to
 16 whether HP knew about the defect . . . and concealed this fact from the
 17 consumers”).

18 AHM does not contend, much less present evidence, that knowledge that
 19 the CR-V can ***never*** safely seat five adult passengers or five passengers when at
 20 least one child safety seat is used -- the actual deception that Plaintiffs allege --
 21 was reasonably accessible to Mr. Garcia at the time of purchase. Further, the
 22 purported omissions at issue in the authorities that AHM cites were expressly
 23 disclosed by Defendant and/or publicly available.¹³ As noted above, there is no

24 F.3d at 863 (discussing *Collins v. eMachines, Inc.*, 202 Cal. App. 4th 249 (2011)
 25 and *Rutledge v. Hewlett-Packard Co.*, 238 Cal. App. 4th 1164 (2015)).

26 ¹³ *See Fresno Motors, LLC v. Mercedes-Benz USA, LLC*, 852 F. Supp. 2d 1280,
 27 1314 (E.D. Cal. 2012) (“secret” terms in another contract already disclosed in
 28 plaintiff’s asset purchase agreement); *Johnson v. Mitsubishi Digital Elecs. Am.,*
Inc., 578 F. Supp. 2d 1229, 1240 (C.D. Cal. 2008) (television manual, which
 was available on the internet, disclosed signal limitations); *Clayton v. Landsing*

1 legal duty for consumers to verify a manufacturer's representations or the
 2 statements in its manuals under California law. *See* Section IV.B, *supra*, at 12-
 3 15; *Thompson*, 130 Cal. App. 4th at 976; *Williams*, 552 F.3d at 939. Nor is it
 4 reasonable to expect that Mr. Garcia or other consumers have the expertise to
 5 accurately determine that a seat belt configuration is safe. Thus, it would be
 6 unreasonable to expect Mr. Garcia to confirm the CR-V's actual capability to
 7 seat five passengers safely at the time he purchased the vehicle, especially since
 8 Mr. Garcia, like probably most consumers, did not bring four other passengers
 9 along with him while shopping for vehicles to test that capability.¹⁴

10 **E. Mr. Garcia's UCL and FAL Claims Are Proper**

11 AHM next argues that Mr. Garcia's UCL and FAL claims must be
 12 dismissed because he has an adequate remedy at law through his CLRA and
 13 express warranty claims. MSJ, at 19-21. Despite filing a motion for summary
 14 judgment, AHM cites the "few federal courts [that] seem to have decided . . .
 15 claims for equitable relief should be dismissed at the pleading stage if the
 16 plaintiff manages to state a claim for relief that carries a remedy at law." *Adkins*
 17 *v. Comcast Corp.*, No. 16-CV-05969-VC, 2017 WL 3491973, at *3 (N.D. Cal.
 18 Aug. 1, 2017) (referring to cases AHM cites).¹⁵ But there is "no basis in

19 *Pac. Fund, Inc.*, No. C 01-03110 WHA, 2002 WL 1058247, at *1 (N.D. Cal.
 20 May 9, 2002) (value of share price publicly available).

21 ¹⁴ Mr. Garcia shopped for vehicles with his then-pregnant wife and young
 22 daughter. Pl. Ex. JJ, at 56:21-57:22, 62:8-18.

23 ¹⁵ *See In re Ford Tailgate Litig.*, No. 11-CV-2953-RS, 2014 WL 1007066, at *1
 24 (N.D. Cal. Mar. 12, 2014) (motion to dismiss); *Philips v. Ford Motor Co.*, No.
 25 14-CV-02989-LHK, 2015 WL 4111448 (N.D. Cal. July 7, 2015) (same); *Durkee*
 26 *v. Ford Motor Co.*, No. C 14-0617 PJH, 2014 WL 4352184, at *1 (N.D. Cal.
 27 Sept. 2, 2014) (same); *Zapata Fonseca v. Goya Foods Inc.*, No. 16-CV-02559-
 28 LHK, 2016 WL 4698942, at *1 (N.D. Cal. Sept. 8, 2016) (same); *Rhynes v.*
Stryker Corp., No. 10-5619 SC, 2011 WL 2149095, at *1 (N.D. Cal. May 31,
 2011) (same); *Munning v. Gap, Inc.*, 238 F. Supp. 3d 1195 (N.D. Cal. 2017)
 (same); *Moss v. Infinity Ins. Co.*, 197 F. Supp. 3d 1191 (N.D. Cal. 2016) (same);
Salas v. Toyota Motor Sales, U.S.A., Inc., No. CV 15-8629 FMO (EX), 2016

1 California or federal law for prohibiting the plaintiffs from pursuing their
 2 equitable claims in the alternative to legal remedies at the pleadings stage” or
 3 the summary judgment stage. *Id.*¹⁶; accord *Wildin v. FCA US LLC*, No.
 4 3:17CV-02594-GPC-MDD, 2018 WL 3032986, at *7 (S.D. Cal. June 19, 2018)
 5 (courts have “declined to follow this practice . . . primarily on the ground that no
 6 controlling authority prohibits a federal court plaintiff from pleading alternative
 7 remedies”) (citing cases).¹⁷ This Court agreed. See *Muriu v. W. Coast Life Ins.*
 8 *Co.*, No. CV 17-380-GW(SKX), 2017 WL 10592124, at *6 (C.D. Cal. May 25,
 9 2017) (rejecting argument that “Plaintiff has an adequate remedy at law” for her

10
 11 WL 7486600 (C.D. Cal. Sept. 27, 2016) (same); *Bentley v. United of Omaha*
 12 *Life Ins. Co.*, No. CV157870DMGAJWX, 2016 WL 7443189 (C.D. Cal. June
 13 22, 2016); *Duttweiler v. Triumph Motorcycles (Am.) Ltd.*, No. 14-CV-04809-
 14 HSG, 2015 WL 4941780, at *1 (N.D. Cal. Aug. 19, 2015). Three of those
 15 authorities are from the same judge. See *Nguyen v. Nissan N. Am., Inc.*, No. 16-
 16 CV-05591-LHK, 2017 WL 1330602 (N.D. Cal. Apr. 11, 2017) (Koh, J.); *Zapata*
 17 *Fonseca*, 2016 WL 4698942 (same); *Philips*, 2015 WL 4111448 (same).

18 ¹⁶ AHM also cites three Ninth Circuit and one California appellate decisions, but
 19 none support its position. In *Whittlestone, Inc. v. Handi-Craft Co.*, the Ninth
 20 Circuit addressed the defendant’s attempt to strike request for lost profits and
 21 consequential damages, which were precluded by law—not relief under the
 22 UCL and FAL. 618 F.3d 970, 974-75 (9th Cir. 2010). Similarly, in *Schroeder*
 23 *v. United States*, the Ninth Circuit discussed the interplay between the
 24 Emergency Low Income Housing Protection Act and a quiet title remedy under
 25 federal common law. 569 F.3d 956, 963-64 (9th Cir. 2009). In *In re Sony PS3*
 26 *Other OS Litig.* affirmed the district court’s decision to sustain the CLRA, FAL,
 27 and UCL claims on a motion to dismiss, and was referring to the fact that, under
 28 California law, “‘Unjust Enrichment’ does not describe a theory of recovery, but
 an effect,” *i.e.*, “restitution.” 551 F. App’x 916, 923 (9th Cir. 2014). Finally,
 the California appellate court in *In re Vioxx Class Cases* was simply discussing
 the equitable nature of an “UCL action” on a motion for class certification. 180
 Cal. App. 4th 116, 129 (2009).

¹⁷ See, e.g., *Deras v. Volkswagen Grp. of Am., Inc.*, No. 17-cv-05452-JST, 2018
 WL 2267448, at *6 (May 17, 2018); *Aberin v. Am. Honda Motor Co., Inc.*, No.
 16-cv-04384-JST, 2018 WL 1473085, at *9 (N.D. Cal. Mar. 26, 2018); *Cabrales*
v. Castle & Mortg. LLC, No. 1:14-cv-01138-MCE, JLT, 2015 WL 3731552, at *4
 (E.D. Cal. June 12, 2015).

1 UCL claim because “Plaintiff is allowed to plead alternative theories, even
 2 inconsistent ones”) (citing Fed. R. Civ. P. 8 and Cal. Bus. & Prof. Code §
 3 17205) (Wu, J.).

4 “As those courts indicate, the time to sort out alternatively pled remedial
 5 requests is *at the end of a case, not the very beginning.*” *Wildin*, 2018 WL
 6 3032986, at *7 (emphasis added). A motion for summary judgment, like a
 7 motion to dismiss, is, of course, not the end of the case if it is even partially
 8 denied. Despite surviving summary judgment, the factfinder may still ultimately
 9 find in favor of AHM on certain factual matters such that Mr. Garcia cannot
 10 establish his legal claims. *Id.* Thus, dismissing Mr. Garcia’s equitable claims at
 11 this juncture would completely subvert the purpose of the UCL and FAL—*i.e.*,
 12 providing equitable relief if the factfinder finds that he is not entitled to any
 13 remedy at law.

14 Conversely, AHM here would not be unduly prejudiced if Mr. Garcia’s
 15 equitable and legal claims proceed to trial simultaneously. If the UCL and FAL
 16 claims are “truly identical to the . . . other claims as [AHM] asserts, retention” of
 17 those claims would cause “only incidental [trial] burdens on Defendant beyond
 18 what would be necessary to litigate those claims that provide legal remedies.”
 19 *Id.* at *7. And if Mr. Garcia prevails on all claims, this Court will “take all
 20 necessary steps to ensure that [he] is not permitted double recovery for what are
 21 essentially two different claims for the same injury.” *People of the State of Cal.*
 22 *v. Chevron Corp.*, 872 F.2d 1410, 1414 (9th Cir. 1989).

23 Finally, the relief that Mr. Garcia requests under the UCL and FAL *is not*
 24 identical to his legal remedies. As this Court found in *Muriu*, Mr. Garcia also
 25 asks the Court to enjoin AHM’s false and misleading representations to the
 26 public under the UCL and FAL. TAC, ¶¶ 111, 120; *see Muriu*, 2017 WL
 27 10592124, at *6 (“To the extent Plaintiff implies that Defendant’s conduct
 28 harms the public (which, in turns, entails a continuing harm to her), Plaintiff’s

1 claims for money damages to compensate for her injury prima facie do not
 2 adequately remedy those harms to the public at large, and therefore injunctive
 3 relief under the UCL is warranted[.]”).

4 **F. Summary Judgment Is Not Warranted On Mr. Garcia’s**
 5 **Requests For Injunctive Relief**

6 AHM argues that Mr. Garcia has no standing to pursue his request for
 7 injunctive relief because he can “visit any Honda dealership prior to purchase to
 8 ‘physically inspect, sit [in], and test drive the vehicle.’” MSJ, at 21-22. This is
 9 another iteration of AHM’s *caveat emptor* defense which, as discussed above,
 10 runs counter to California consumer protection laws precluding any duty on a
 11 reasonable consumer to verify a manufacturer’s representations. *See* Section
 12 IV.B, *supra*, at 12-15; *Thompson*, 130 Cal. App. 4th at 976; *Williams*, 552 F.3d
 13 at 939.

14 Moreover, Defendant’s arguments directly contradict the Ninth Circuit’s
 15 analysis in *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 965 (9th Cir.
 16 2018). There, the Ninth Circuit held that the plaintiff “face[d] a threat of
 17 imminent or actual harm by not being able to rely on Kimberly–Clark’s labels in
 18 the future” on whether its wipes were truly “flushable” as advertised, and that
 19 “this harm is sufficient to confer standing to seek injunctive relief.” *Id.* at 967.
 20 Under AHM’s proposition, however, the plaintiff in *Davidson* would have no
 21 standing because she could simply request samples of Kimberly-Clark’s
 22 products to test the truth of the company’s representations, which directly
 23 contradicts the holding in *Davidson*.

24 **G. Mr. Garcia’s Seat Belt Warranty Claim Is Supported By**
 25 **Material Evidence**

26 Finally, AHM argues that summary judgment should be granted on Mr.
 27 Garcia’s seat belt warranty claim because there is no material evidence that the
 28 CR-V’s rear seat belt configuration is defective, and that even if there were, “the

1 seat belt design is not a seat belt ‘component’ subject to the seat belt warranty.”
 2 MSJ, at 22. Neither points have any merit.

3 First, as discussed above, Section II.B, *supra*, at 4-5, Plaintiffs have
 4 presented material evidence that the CR-V is defective and cannot, in fact, fit
 5 five passengers safely, with or without a child safety seat, because of its rear seat
 6 belt configuration. Second, AHM’s attempt to distinguish between a “seat belt
 7 component” and the seat belt configuration is a distinction without a difference.
 8 All of the components related to the design defect preventing passengers from
 9 buckling into the backseat safely -- *e.g.*, the center rear anchor/left rear buckle
 10 assembly Mr. Whitman identifies (Pl. Ex. A, ¶ 17) -- fails to function properly
 11 during normal use and will need to be replaced under the seat belt warranty.

12 **V. CONCLUSION**

13 For the foregoing reasons, Mr. Garcia respectfully requests that this Court
 14 deny AHM’s Motion for Summary Judgment.

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Respectfully submitted,

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